

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Iowa Wireless Services, LLC,)	
d/b/a i wireless;)	
Iowa Wireless Services, LP, and)	Docket No. 04-0628
Iowa Wireless Services Holding Corporation)	
)	
Application for Certificate of Service Authority)	

STAFF’S RESPONSE TO VERIFIED AMENDMENT TO APPLICATION

NOW COMES the Staff of the Illinois Commerce Commission, by and through its attorneys, and for its Response to the Verified Amendment to Application (“Amended Application”) filed by applicants on January 19, 2005, states as follows:

1. On October 14, 2004, Applicant Iowa Wireless Services, LLC d/b/a/ I wireless (hereinafter “Iowa LLC”) filed its Application (“Application”) with the Commission. With its application, Iowa LLC stated that it sought a “certificate to become a telecommunications carrier” following the conversion of Iowa Wireless Services, LP to Iowa LLC. (See October 13, 2004 letter of i wireless). Prior to its conversion to Iowa LLC, Iowa Wireless, LP held the FCC cellular licenses and had been granted a certificate of service authority by this Commission in Docket No. 02-0053. In conjunction with the conversion of the LP to Iowa LLC, a holding company, Iowa Wireless Services Holding Corporation, was formed to hold the FCC licenses. In its Application, Iowa LLC requested that the Commission cancel the certificate of service authority granted to Iowa Wireless LP in light of the conversion of the LP to Iowa LLC. In support of the application, Iowa LLC included “a copy of the FCC licenses, financial statements, LLC certificate of

formation, a copy of the letter of approval of authority to transact business in Illinois, and biographies of the company's managerial and technical resources." (October 13, 2004 letter).

2. Section 13-401 of the Act governs the issuance of a certificate of service authority for cellular applicants, stating in relevant part:

"[T]he Commission shall approve a cellular radio application for a Certificate of Service Authority without a hearing upon a showing by the cellular applicant that the Federal Communications Commission has issued to it a construction permit or an operating license to construct or operate a cellular radio system in the area as defined by the Federal Communications Commission, or portion of the area, for which the carrier seeks a Certificate of Service Authority."

220 ILCS 5/13-401. Therefore, the only showing required for approval is a showing by the cellular applicant of its construction permit or operating license.

3. Applicants' initial request for a certificate of service authority sought the issuance of a certificate for Iowa LLC only. The Amended Application adds Iowa Wireless Services Holding Corporation as a joint applicant. (See Amended Application Amendment, p. 1). Iowa Wireless Services Holding Corporation is a wholly owned subsidiary of Iowa LLC, and was formed to hold the federal wireless licenses. (Amended Application, p. 1). The Verified Amendment asserts that Iowa LLC is a telecommunications carrier under the Act and will be the operating company providing the cellular services under the FCC licenses held by Iowa Wireless Services Holding Corporation. (Amended Application, pp. 1-3). Therefore, the amended application includes both the operating company and FCC license holder as joint applicants for a certificate of service authority.

4. In this Commission's Order in Nextel Partners Operating Corp. and NPCR, Inc. d/b/a Nextel Partners, Docket No. 03-0487, the Commission granted a motion to dismiss the Nextel entities' application for certificates of service authority, finding that it was "apparent from the application that the FCC cellular licenses are held by entities who are not before the Commission as applicants under Section 13-401." (Order, p. 7).

In addition, the Commission ruled that one of the Nextel applicants had not alleged sufficient facts to demonstrate sufficient control over plants, property or equipment used to provide telecommunications service so that they could be considered an operating company qualifying as a telecommunications carrier. (Order, p. 7). This finding was an acknowledgment of the argument made by the Commission Staff in that case. Staff had argued that nothing in the Act prohibited more than one telecommunications carrier (as defined in 220 ILCS 5/13-202) from operating together to provide telecommunications service. (Staff's Motion to Dismiss in Docket 03-0487, p. 14). Staff further argued that an amended, joint application that included the appropriate Nextel FCC license holder (along with the operating company applicants) would satisfy the requirements of Section 13-401. (*Id.* at p. 21).

The Commission, in the Nextel order, did not disagree with Staff's position in that case. Nor did the Commission preclude the Nextel applicants from refiling a joint application to include both the FCC license holder and the appropriate operating company (with sufficient facts to support the requisite level of control).

5. Staff takes the same position in the present case. Iowa LLC and Iowa Wireless Services Holding Corporation may properly be granted a certificate of service authority as joint applicants for several reasons. First, the Applicants have included documentation in support of their application, showing that the actual license holder, Iowa Wireless Services Holding Corporation, is a party to the application and is a telecommunication carrier under the Act. In the Nextel case, the holder of the FCC licenses was not a party to their application. Second, the Verified Amendment alleges sufficient facts to support the conclusion that Iowa LLC is both the operating company and a “telecommunications carrier” under the Act. (See Amended Application, Exhibits).

As in the Nextel docket, Staff recognizes that it is not necessary, under Illinois law, for telecommunications services to be provided via a single, unified corporate organizational structure. In the present docket, both Iowa LLC and Iowa Wireless Services Holding Corporation are each telecommunications carriers that operate together to provide cellular telecommunications services under the “i wireless” trade name. Under Section 13-401, “no telecommunications carrier not possessing a certificate of public convenience and necessity or certificate of authority from the Commission at the time this Article goes into effect shall transact any business in this State until it shall have obtained a certificate of service authority from the Commission pursuant to the provisions of this Article.” 220 ILCS 5/13-401. Under Section 13-202, when one or more entities “owns, controls, operates or manages, within this State, directly

or indirectly, for public use, any plant, equipment or property used or to be used for or in conjunction with, or owns or controls any franchise, license, permit or right to engage in the provision of, telecommunications services”, each must obtain a certificate of service authority. 220 ILCS 5/13-202.

6. Applicants make the additional argument that their request for a certificate of service authority may be granted to Iowa LLC alone, citing this Commission’s Order in VoiceStream PCS II Corporation, Docket 00-0414..¹ As Staff argued in the Nextel proceeding, the Order in the VoiceStream case was internally inconsistent in terms of the recitation of the corporate structure of VoiceStream and its subsidiaries and which of the entities held the FCC license.² (See Staff Reply Brief on Exception, Docket 03-0487, pp. 3, 5-6). However, it is Staff’s position, as recognized in the Commission’s more recent and more considered decision in the Nextel order, that the statutory language of Section 13-401 is clear that the cellular *applicant* must demonstrate that it has been issued license by the FCC. In keeping with the Nextel decision, this Commission should not grant a certificate under Section 13-401 to Iowa LLC alone because that entity has not had “issued to it a construction permit or an operating license to construct or operate a cellular radio system in the area as defined by the Federal Communications Commission.”

¹ As acknowledged by Applicants, the Commission’s Orders are not res judicata in later proceedings. Citizens Utility Board v. ICC, 166 Ill.2d 111, 125 (1995).

² In the VoiceStream order the Commission made contradictory statements, first stating: “The FCC granted applicant two D block licenses and one E block license authorizing applicant to operate radio transmitting facilities...”(see p. 1), and then: “Applicants *subsidiaries* have been granted licenses by the FCC to operate radio transmitting facilities, as described in the prefatory portion of this Order.” (see p. 2, emphasis added).

As discussed above, unlike the Nextel case, Applicants are, pursuant to the Verified Amendment, willing to seek a certificate of service authority for their license holder. Applicants are correct that the present case is further distinguishable from the Nextel case in that Iowa Wireless Services Holding Corporation is a wholly owned subsidiary of Iowa LLC. As such, the joint applicants in the Verified Amendment have created a division of functions regarding the provision of telecommunications service under the same FCC licenses and act within the same corporate structure recognized by the FCC. In Staff's view, based solely upon these facts, this Commission should recognize that both Iowa LLC and Iowa Wireless Services Holding Corporation are each telecommunications carriers under the Act, and grant joint applicants a joint Certificate of Service Authority under Section 13-401.

7. Applicants' Amended Application also seeks to "amend the Application to request that a Certificate of Service Authority be issued . . . to serve the State of Illinois rather than limiting the service area to the 634 LATA as originally requested. The service area authorized by the FCC under call sign WPOH984 is larger than the 634 LATA." (Amended Application, p. 6).

Applicants' Certificate of Service Authority should be limited to its licensed territory in Illinois. Because this Commission's granting of a certificate is dependent upon a showing of Applicants' license to operate, it should be limited to those areas where Applicants have a license to operate. Section 13-401 authorizes the issuance of a certificate "...in the area as defined by the Federal Communications Commission, or portion of the area, for which the carrier seeks

a certificate of service authority.” 220 ILCS 5/13-401. Applicants have not shown that they possess licenses to operate in the entire State of Illinois. Therefore, this request should be denied.

8. Applicants also ask that the Certificate of Service Authority for Iowa Wireless, LP be cancelled. (Amended Application, p. 7). Applicants’ request should be granted. Applicants have shown sufficient facts and provided sufficient documentation to support their contention that Iowa Wireless LP no longer exists and has been completely replaced by Iowa LLC. Because the conversion of Iowa Wireless Services LP to Iowa Wireless Services LLC is a “straightforward conversion,” with Iowa LLC assuming the role of operating entity, there will be no discontinuation or abandonment of service for Iowa Wireless Services LP’s subscribers. (See Exhibit A to Amended Application). Iowa LLC will continue to do business as “i wireless,” as did Iowa Wireless Services, LP. Therefore, this Commission should determine that the notice requirements of Section 13-406 are inapplicable to the cancellation of Iowa Wireless Services LP’s certificate of service authority since service will not be discontinued or abandoned. 220 ILCS 5/13-406.

9. Staff has no objection to the granting of Applicants’ remaining requests: 1) waivers of Sections 210, 220, 255, 285, 300, 305, 315, 705, 710, 720, 725, 730, 735, 745 and 755 as inapplicable to the cellular applicants, and 2) that this Commission authorize Applicants to maintain its books and records outside the State of Illinois, at Applicants place of business in Urbandale Iowa. Staff notes that this Commission honored these same requests in Docket 02-

0053, in its Order granting a Certificate of Service Authority Iowa Wireless Services. LP.

WHEREFORE, in response to the Verified Amended Application of Iowa Wireless Services LLC and Iowa Wireless Services Holding Corporation, Staff requests that this Commission issue an Order jointly granting Iowa Wireless Services LLC and Iowa Wireless Services Holding Corporation a joint certificate of service authority within its licensed territory in Illinois as defined by the FCC; and for any other relief this Commission deems just.

Respectfully submitted,

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